

Attorney Docket No.: J3646(C)
Serial No.: 10/502,021
Filed: July 20, 2004
Confirmation No.: 8722

REMARKS

Claim 1 has been amended to specify that the composition is in the form of a product selected from the group consisting of personal wash products, shampoos, hair conditioners, scalp lotions, hair tonics, and hair styling products. See, for example, the specification at page 15, lines 5 to 7 and 12 to 14; page 18 line 20; and page 50, Example 7. Claim 17 is cancelled without prejudice. Entry thereof is respectfully requested.

Pursuant to the Office Action of April 4, 2008, claims 1-15 and 17-21 stand rejected under 35 U.S.C. §103(a) over EP 1 285 588 (Frith EP) in view of Brown et al. (US 6,673,371); additionally, claims 1, 3, 5-7 and 19 stand rejected on the ground of nonstatutory obviousness-type double patenting over US 7,169,427 (Frith US). These rejections are respectfully traversed.

The subject application is a US National Stage filing under 35 U.S.C. §371 from International Application No. PCT/EP02/14286 (International filing date of December 13, 2002) which, in turn, claims priority from a UK application filed January 25, 2002. Frith EP, filed July 16, 2002, published on February 26, 2003, and was granted November 28, 2007.¹ The publication date of Frith EP is subsequent to the December 13, 2002 filing date of PCT/EP02/14286. Additionally, as noted in 35 U.S.C. §363:

An international application designating the United States shall have the effect from its international filing date under article 11 of the treaty of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

It is respectfully that PCT/EP02/14286 establishes that the subject application was made prior to the February 26, 2003 publication date of Frith EP, and that Frith EP is

¹ Frith EP claims priority from EP 01306859 filed August 10, 2001.

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not otherwise available as art against the subject application under 35 U.S.C. §103(a).² In view of the foregoing, reconsideration of the rejection under 35 U.S.C. §103(a) is respectfully requested.

The subject application is directed to a cosmetic or personal care composition comprising in the form of a personal wash product, shampoo, hair conditioner, scalp lotion, hair tonic or hair styling product that comprises gelled particles, at least 50% by volume of which are required to have an aspect ratio of at least 5 and a maximum width of 40µm. The subject application is also directed to processes for producing such compositions (including, as in claim 20, a process wherein the gelled particles are formed in the presence of a surfactant), as well as to methods of treating hair comprising the application to the hair of a composition comprising the aforesaid gelled particles.

Pursuant to the subject invention it was found that cosmetic and personal care compositions containing the aforesaid gel particles may achieve specific and/or targeted delivery of hair benefit agents and/or that such compositions may have desirable textural attributes, for example, increased creaminess. Additionally, it was found possible to produce such compositions by a process wherein the gelled particles are produced in the presence of a surfactant (an additive which may be present at relatively high concentrations in compositions such shampoos and body washes); as described in the subject specification this is particularly surprising in that the surfactant might reasonably have be expected to interfere with gel formation by breaking up or preventing the gelled particles from being formed.

Frith US is directed to the production of products, particularly food products (e.g., dairy type spreads, frozen desert products, dressings and sauces) that contain

² Frith US is the US family member of Frith EP; it was filed in the US on August 6, 2002 and published as on February 13, 2003. While Frith US was filed in the US earlier than the subject application, the UK application from which the subject

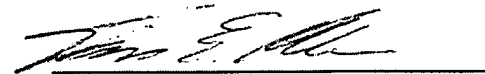
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first and second aqueous phases, the first phase having gelled particles that are characterized and in that a minimum of 80 vol% of the particles have an aspect ratio of at least 2 and a maximum width of 100µm and in that a minimum of 50 vol% of the particles have an aspect ratio of at least 5 and a maximum width of 40µm and a minimum of 20vol% of the particles have an aspect ratio of at least 10 and a maximum width of 20µm. There is, however, nothing in the Frith US claims that discloses or suggests personal care compositions, let alone products such as personal wash products, shampoos, hair conditioners, scalp lotions, hair tonics, and hair styling products which are the form of compositions described in the subject claims in their current form. It is, therefore, respectfully submitted that the obviousness-type double patenting rejection over Frith US has been overcome by the subject amendment, and reconsideration thereof is respectfully requested.

In view of the foregoing amendments and remarks, reconsideration and allowance of the subject claims is respectfully requested.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



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application claims priority is enabling for the subject claims and establishes that the subject invention was made before the date on which Frith US was filed in the US.